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In the Supreme Court of the United States

LEONARD EDELMAN, PETITIONER

v.

LYNCHBURG COLLEGE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE

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QUESTIONS PRESENTED

A regulation of the Equal Employment Opportunity Commission (EEOC), 29 C.F.R. 1601.12(b), implementing Title VII of the Civil Rights Act of 1964 provides that a charge of employment discrimination filed with EEOC may be amended to cure "technical defects or omissions, including failure to verify the charge," and that such an amendment to verify the charge "will relate back to the date the charge was first received" by EEOC, even if the verification of the charge is made after the statutory limitation period for filing a charge of discrimination, as long as the charge of discrimination was first received by EEOC during that statutory limitation period. The questions presented are whether 29 C.F.R. 1601.12(b) is valid, and if not, whether petitioner permissibly relied on that regulation so as to warrant the application of equitable tolling of the limitation period on the facts of this case.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. On June 6, 1997, respondent, a private college, denied tenure to petitioner, a member of the faculty. Pet. App. 2a. On November 14, 1997 (160 days later), petitioner sent a detailed letter to the Equal Employment Opportunity Commission (EEOC or Commission), alleging that respondent denied him tenure because of his sex and that respondent's dean was systematically purging white men from the faculty. C.A. App. 61-65. Petitioner ended the letter by stating, "I hereby file a charge of employment discrimination against Lynchburg College * * * and I call upon the EEOC to

investigate this case in an attempt to rectify this unjust and unfair situation before any more people are subjected to this illegal discrimination." *Id.* at 64-65. The letter was signed by petitioner but was not executed under oath or affirmation. *Id.* at 65.

On November 26, 1997, petitioner's attorney wrote to EEOC, stating that petitioner "would like to have a personal interview with an EEOC investigator prior to the final charging documents being served on the college." Pet. App. 2a. That letter added that "[i]t is my understanding that delay occasioned by the interview will not compromise the filing date, which will remain as November 14, 1997. Please advise if my understanding in this regard is not correct." *Ibid.*

On December 3, 1997, an EEOC employee sent petitioner a form letter, without acknowledging the letter from his attorney. That form letter stated that petitioner should telephone EEOC to arrange an interview. Petitioner's interview was eventually scheduled for March 3, 1998. After the interview, an EEOC employee drafted an EEOC Form 5 Charge of Discrimination and mailed it to petitioner on March 18, 1998, for petitioner's review and verified signature. EEOC received the verified charge from petitioner on April 15, 1998, 313 days after the last alleged discriminatory employment practice. On March 26, 1999, after completing its investigation, EEOC issued petitioner a notice of right to sue. Pet. App. 2a-3a.

2. Petitioner initially filed suit against respondent in Virginia state court and alleged various state-law claims. He subsequently added a count alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1). Respondent removed the action to federal district court and then moved to dismiss the Title VII claim on the

ground that petitioner had failed to file a valid charge of discrimination with EEOC within the applicable statutory limitation period. Respondent argued that petitioner did not file a charge of discrimination until EEOC received the verified Form 5 Charge on April 15, 1998, after the expiration of the applicable 300-day limitation period for filing a charge of discrimination with EEOC. See 42 U.S.C. 2000e-5(e)(1).[1] Petitioner contended that his initial letter of November 14, 1997, complaining of discrimination was a timely charge of discrimination, and that, under an EEOC regulation, 29 C.F.R. 1601.12(b), his subsequent submission of a verified charge form related back to that date. Although respondent acknowledged that regulation, it argued, *inter alia*, that the regulation conflicted with the underlying statute. See Br. in Opp. 5 n.1.

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[1] The basic limitation period for filing a charge of discrimination in violation of Title VII with EEOC is 180 days after the unlawful employment practice. 42 U.S.C. 2000e-5(e)(1). However, if the complainant has filed a discrimination charge with a state or local government agency that has legal authority to "grant or seek relief" from the alleged unlawful employment practice, then the statutory limitation period for filing a charge with EEOC is 300 days. 42 U.S.C. 2000e-5(e)(1). (Such state and local agencies are commonly referred to as "deferral" agencies. See *EEOC* v. *Commercial Office Prods. Co.*, 486 U.S. 107, 112 (1988); *Tinsley* v. *First Union Nat'l Bank*, 155 F.3d 435, 439-442 (4th Cir. 1998).) In addition, if a complainant submits a charge of discrimination to EEOC based on employment practices that occurred in a State or locality that has a "deferral" agency, EEOC will "defer" the discrimination charge to the appropriate state or local agency, even if the complainant has not filed a discrimination complaint directly with that state or local agency. See 29 C.F.R 1601.13(a)(3) and (4), 1601.13(c); *Tinsley*, 155 F.3d at 439. Virginia has such a deferral agency, the Virginia Council on Human Rights. See 29 C.F.R. 1601.74(a); *Tinsley*, 155 F.3d at 440.

The district court agreed with respondent that petitioner had failed to file a timely charge of discrimination, dismissed petitioner's Title VII claim, and remanded the remainder of the case to state court. Pet. App. 16a-17a. Although the district court noted that petitioner initially wrote to EEOC to complain about employment discrimination by respondent on November 14, 1997, and that his attorney also wrote to EEOC on November 26, 1997—both dates well within the 300-day limitation period—it concluded that "neither [petitioner] nor the EEOC proceeded as if the November 1997 letter[s] did, or were intended to, commence proceedings." *Id.* at 22a-23a. The district court observed that, although Title VII provides that EEOC shall serve notice of a charge of discrimination on the employer within ten days of the filing of the charge, see 42 U.S.C. 2000e-5(b), EEOC did not serve notice of a discrimination charge on respondent within ten days of either of the November 1997 letters, petitioner's counsel requested that notice of the charge of discrimination not be served on respondent until after petitioner's interview with EEOC staff, EEOC did not assign a charge number to petitioner's case until after petitioner submitted his verified charge form in April 1998, and EEOC did not refer either of the November 1997 letters to the Virginia Commission on Human Rights. Pet. App. 22a; see p. 3 note 1, *supra*. The district court also ruled that petitioner was not entitled to equitable tolling of the 300-day limitation period in this case because, among other reasons, he received the charge of discrimination prepared by EEOC within the 300-day limitation period and could have returned the verified charge in a timely fashion so as to preserve his rights. *Id.* at 23a.

3. The court of appeals affirmed, but the panel was divided in its reasoning. See Pet. App. 1a-13a (majority); *id.* at 14a-15a (concurrence).

a. The majority rejected petitioner's contention that, under the EEOC regulation, 29 C.F.R. 1601.12(b), petitioner's initial, non-verified letter complaining about discrimination complied with the 300-day limitation period and his subsequent verification of his charge of discrimination related back to the date of that initial complaint. The majority did not take issue with petitioner's submission that his initial, non-verified letter to EEOC was actually treated by the Commission as a charge of discrimination. It concluded, however, that EEOC's regulation permitting the verification of the charge to relate back to the filing of the initial charge is contrary to the statute and therefore invalid. Pet. App. 1a-2a.

The majority applied the framework for review of agency regulations established in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984). See Pet. App. 5a. Identifying "[t]he precise question at issue in this case" as "whether verification must occur within the statutory limitations period," the court ruled that "Congress has unambiguously spoken" on that question. *Id.* at 6a. The court noted that 42 U.S.C. 2000e-5(b) specifically requires that "[c]harges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." The "plain meaning of this language," stated the court, "compels the conclusion that if a discrimination claim is not in writing, under oath or affirmation, * * * it is not a charge." Pet. App. 6a. In addition, it stated that 42 U.S.C. 2000e-5(e)(1) "affirmatively and plainly establishes the time period within which a charge must

be filed." Pet. App. 6a. Thus, the court concluded, "[b]ecause a charge requires verification [and] because a charge must be filed within the limitations period, it follows that a charge must be verified within the limitations period." *Ibid.* (citations omitted). Based on that conclusion, the court also rejected petitioner's argument that EEOC's regulation is entitled to deference: "[T]o the extent that the regulation permits a charge to be verified after the expiration of the limitations period, it thwarts the plain language of Title VII * * * [and] contravenes Congress's intent, as expressed through the plain language of the statute." *Ibid.*

The majority acknowledged that its holding conflicts with decisions of four other circuits that have held that a verified charge of discrimination filed outside the statutory limitation period may relate back to an unverified charge of discrimination filed within that period. See Pet. App. 9a-11a (citing cases). The court nonetheless disagreed with those decisions on the ground that they "improperly substitute policy justifications for clear statutory language." *Id.* at 11a.

Finally, the majority rejected petitioner's argument that the limitation period should be equitably tolled in this case. Pet. App. 12a. The court ruled that the facts of this case did not warrant equitable tolling because petitioner had been represented by counsel at all stages of the administrative process, and because petitioner waited a few months after the alleged discrimination before contacting the Commission. The majority also noted, as had the district court, that EEOC mailed the draft charge to him before the expiration of the limitation period, and that petitioner could have signed and returned the draft within that period. *Ibid.*

b. Judge Luttig concurred only in the judgment of the court. Pet. App. 14a-15a. He would have affirmed the dismissal of petitioner's claim on a narrower ground similar to that relied on by the district court, namely, that petitioner did not intend his initial letter to EEOC to be treated as a charge of discrimination. *Id.* at 14a. Judge Luttig stated that he was "sufficiently uncomfortable" with the broader ground relied on by the majority—namely, that "verification may never relate back" after expiration of the limitation period—that he was unable to concur in that ruling. *Ibid.*

Judge Luttig noted that "we are not confronted with a single statute stating either by terms or in effect that 'a verified charge must be filed within [300] days of a discriminatory action.'" Pet. App. 14a. Rather, he observed, "we are presented with two statutes, the first providing that a charge shall be filed within [300] days of the unlawful employment practice, and the second providing that charges shall be in writing and include an oath or affirmation." *Ibid.* He further noted that "there is not *necessarily* the nexus required" between those two statutes to sustain the majority's reading. *Ibid.* "[I]f the two statutes are so read as temporally independent of each other, or at least not temporally coterminous, then there is no statutory requirement that the charge be verified within the [300] days, and relation back would be available by regulation." *Ibid.*

Finally, Judge Luttig observed, "there is no statutory definition of 'charge'" in Title VII. Pet. App. 14a-15a. Therefore, he continued, "the 'charge' that must be filed within [300] days need not—at least need not by definition—be an allegation that is verified * * * . Insofar as the statute informs us, the 'charge' that must be filed within [300] days can be merely an allegation of discrimination; it need not be verified." *Id.* at 15a.

Because he did not find EEOC's construction of Title VII on which the regulation is based to be contradicted by anything in the statute itself, he would have deferred to that administrative interpretation. *Ibid.*

DISCUSSION

The EEOC regulation at issue in this case permits the Commission to take action on a charge of discrimination under Title VII as long as the charge is submitted in writing to the Commission within the statutory limitation period and that charge is verified by the complainant, even though the charge is not verified during the limitation period. The regulation allows a later verification to relate back to the original filing date of the unverified charge. That regulation is of considerable importance to EEOC's enforcement of Title VII, because the great majority of discrimination complaints are submitted by individuals who are unlikely to know at the time of submission that the charge must be verified. The importance of that regulation, in practical terms, to EEOC's enforcement responsibilities counsels in favor of this Court's review.

The court of appeals' decision, moreover, is erroneous. While Title VII does provide that a charge of discrimination must be filed with EEOC within the statutory limitation period and also provides that a charge must be verified before EEOC may require the respondent to participate in its investigation, the statute does not require that the charge be verified during the statutory limitation period. The court of appeals' decision also conflicts with the decisions of several other circuits. The Court should therefore grant review to resolve this important issue concerning

the administration of federal employment-discrimination law.[2]

1. The regulation at issue in this case provides in pertinent part:

> [A] charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments * * * will relate back to the date the charge was first received.

29 C.F.R. 1601.12(b). This regulation takes account of two significant realities in Title VII enforcement. First, the vast majority of individuals who contact EEOC to complain about alleged employment discrimination are laypersons acting without legal assistance. Those complainants are not likely to know, at least when they initially contact the Commission, that a complaint of discrimination must be verified by oath or affirmation. Second, the limitation periods for filing an administrative charge of discrimination with EEOC are unusually short: 180 days after the alleged unlawful employment practice, or 300 days in States and localities with their own employment-discrimination agencies authorized to grant or seek relief. 42 U.S.C. 2000e-5(b); see p. 3 note 1, *supra*.

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[2] The court of appeals' further ruling, rejecting equitable tolling on the particular facts of this case, does not appear to raise any broad issues of federal law concerning the standards governing equitable tolling or to conflict with the decision of any other court of appeals. We therefore recommend that the Court grant review only on the first question presented.

Thus, complainants may send letters to EEOC near the end of the limitation period, intending thereby to file charges of discrimination, without being aware that the charge must be verified. The regulation at issue here ensures that such persons will not unwittingly forfeit their rights to pursue remedies for unlawful discrimination. It also authorizes EEOC to investigate their allegations of discrimination, which the Commission could not do if the unverified charge were viewed as not timely filed.[3]

In addition, EEOC's practice has long been to have Commission staff prepare a short formal charge of discrimination (the Form 5) for the complainant to review and to execute under oath or affirmation, once the staff has distilled the essence of the allegation from contacts with the complainant. See, *e.g.*, C.A. App. 51. This practice simplifies EEOC's enforcement of Title VII by clarifying and focusing the complainant's allegation as well as the inquiry that EEOC then makes of the employer. That process also takes time, however.[4]

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[3] Under Title VII and the Americans with Disabilities Act of 1990 (ADA), EEOC may investigate only matters that are tied to charges of discrimination that have been filed with the Commission. See *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 64 (1984) (Title VII); 42 U.S.C. 12117(a) (same enforcement provisions made applicable to ADA).

[4] That is particularly true in the great majority of instances in which individuals complaining of discrimination initially contact EEOC by mail or telephone. When an individual initially contacts EEOC by telephone, a member of the Commission staff may discuss the matter with the caller to make sure that the person's complaint is not more appropriately directed to another agency (such as the Department of Labor or the National Labor Relations Board), and then typically sends that person an intake sheet or questionnaire to fill out in his own words and to return to the Commission. Once that intake sheet or questionnaire is returned to

Because complainants often do not live near an EEOC office, the process of transferring the individual's allegations to a Form 5 Charge of Discrimination ready for execution and verification usually involves correspondence by mail between the Commission and the complainant. The process of preparing a verified charge of discrimination may take several weeks.

Thus, even when a complainant sends the Commission a detailed written letter setting forth the basis for his allegation of discrimination well within the statutory limitation period, it will often be impracticable for the Commission to prepare, and the complainant to verify, a Form 5 Charge of Discrimination before the short limitation period has elapsed. If such an initial written (but unverified) submission to the Commission were not treated as a timely filing of a charge, EEOC would likely lose the opportunity to investigate allegations of discrimination in many cases, and individuals would lose the opportunity to obtain relief as well.[5]

EEOC, a Commission staff person will then examine the case further, may schedule an interview with the complainant (in person or by telephone), and may eventually prepare a Form 5 Charge of Discrimination for the complainant to verify and execute. Under the EEOC regulation at issue here, a complainant's telephone call may not be treated as a charge of discrimination; a charge must be in writing. See 29 C.F.R. 1601.12(b).

[5] In addition, the Commission has entered into memoranda of understanding (MOUs) with several other federal agencies, pursuant to which complaints of discrimination filed initially with those other agencies are referred to EEOC for investigation as though they had been filed under Title VII or the ADA. See, *e.g.*, 8 FEPM 403:3005 (1999) (EEOC's MOU with Department of Labor's Office of Federal Contract Compliance Programs); see also 42 U.S.C. 12117(b) (requiring agencies to avoid duplication of effort in investigating ADA complaints, and requiring coordinating

2. The court of appeals erred in invalidating the EEOC regulation. Contrary to the court's decision, the regulation is not inconsistent with any provision of Title VII, and it constitutes a reasonable exercise of EEOC's authority under Title VII to fashion procedural rules for the investigation of administrative complaints of discrimination. The court therefore should have upheld the regulation under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).

Section 706 of Title VII, 42 U.S.C. 2000e-5, sets forth various provisions governing EEOC's enforcement authority. Section 2000e-5(b), addressing EEOC's administrative treatment of charges of discrimination, states that "[c]harges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires." Section 2000e-5(e), governing the time for filing charges with EEOC, separately provides that a charge "shall be filed" within 180 days after the alleged unlawful employment practice, or, in States such as Virginia with "deferral" agencies (see p. 3 note 1, *supra*), within 300 days. Thus, under Title VII, a charge of discrimination must be verified under oath or affirmation by the complainant, and the charge must be timely filed.

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mechanisms such as MOUs). The regulations governing complaints under anti-discrimination provisions, such as Executive Order No. 11,246 (3 C.F.R. 167 (1965 Supp.)), that are enforced by those other agencies do not require verification as a prerequisite to proper filing of a charge of discrimination. The court of appeals' decision, if allowed to stand, would impair EEOC's ability to investigate discrimination complaints that are submitted to other agencies in a timely fashion and are promptly referred to EEOC by those other agencies but are not verified by the complainant within the statutory limitation period.

As Judge Luttig observed (Pet. App. 14a), however, neither Section 2000e-5 nor any other provision of Title VII requires that the charge be *verified* within the limitation period for filing charges. As long as the charge is timely filed with EEOC, Title VII does not preclude a complainant from subsequently rectifying formal errors in the charge, including the lack of verification, after the expiration of the limitation period. Nor does anything in Title VII require EEOC to disregard a written, detailed complaint of employment discrimination as a nullity before it has been verified by the complainant, even if it has been submitted to EEOC within the limitation period. Cf. *Becker* v. *Montgomery*, No. 00-6374 (May 29, 2001), slip op. 4-5 (although Federal Rule of Appellate Procedure 4(a)(1) requires notice of appeal to be timely filed in district court, and Federal Rule of Civil Procedure 11(a) separately requires every paper filed in district court to be signed, neither Rule provides "that the signature requirement cannot be met after the appeal period expires").

In other words, the governing statute does not speak directly to the matter at hand. Accordingly, EEOC's regulation should be upheld if it represents a reasonable exercise of EEOC's statutory authority over the procedural requirements for the proper filing and treatment of administrative charges. See 42 U.S.C. 2000e-12(a) (authorizing EEOC "to issue, amend, or rescind suitable procedural regulations to carry out the provisions of [Title VII]"); 42 U.S.C. 2000e-5(b) (charges "shall contain such information and be in such form as the Commission requires"); see also *EEOC* v. *Commercial Office Prods. Co.*, 486 U.S. 107, 115 (1988) ("EEOC's interpretation of Title VII, for which it has primary enforcement responsibility, * * * need only be reasonable to be entitled to deference."); *id.* at 125

(O'Connor, J., concurring in part and concurring in the judgment) (deference is "particularly appropriate" when regulation involves a "technical issue of agency procedure").

Deference is particularly appropriate here because EEOC adopted the regulation shortly after the passage of Title VII and has retained it ever since. See *EEOC* v. *Associated Dry Goods Corp.*, 449 U.S. 590, 600 n.17 (1981) (EEOC's "contemporaneous construction" of Title VII "deserves special deference when it has remained consistent over a long period of time"). The relation-back provision now found at 29 C.F.R. 1601.12(b) was initially promulgated in 1966, just two years after Title VII was enacted. See 31 Fed. Reg. 10,269. Despite minor changes in the citation and wording, the substance has remained essentially the same.[6] Moreover, although Congress has amended Title VII several times, including amendments to Section 2000e-5 in 1972 (see Pub. L. No. 92-261, § 4, 86 Stat. 104), it has not overridden the regulation by adding a limitation period to the verification requirement in Section 2000e-5(b) or a verification requirement to the limitation period in Section 2000e-5(e). Cf. *Associated Dry Goods*, 449 U.S. at 600 n.17 (Congress's failure to disapprove EEOC regulation "suggests its consent to the Commission's practice.").[7]

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[6] Compare 29 C.F.R. 1601.12(b) (2000) ("A charge may be amended to cure technical defects or omissions, including failure to verify the charge * * * . Such amendments * * * will relate back to the date the charge was first received.") with 29 C.F.R. 1601.11(b) (1966) ("A charge may be amended to cure technical defects or omissions, including failure to swear to the charge * * * and such amendments relate back to the original filing date.").

[7] Congress was presumably aware that, before 1972, courts of appeals had uniformly held, consistent with EEOC's 1966 regulation, that a verification of a charge outside the charge-filing period could relate back to the initial filing of the charge, if that initial filing was timely. See *Blue Bell Boots* v. *EEOC*, 418 F.2d 355, 357 (6th Cir. 1969); *Weeks* v. *Southern Bell Tel. & Tel. Co.*, 408 F.2d 228, 230-231 (5th Cir. 1969); *Choate* v. *Caterpillar Tractor Co.*, 402 F.2d 357, 360 (7th Cir. 1968). Some courts have questioned whether, in the 1972 amendments, which modestly changed the language of Section 2000e-5, Congress intended to convert the verification provision from a "directory and technical" provision to one that is "mandatory and substantive." See *Vason* v. *City of Montgomery*, 240 F.3d 905, 907 n.2 (11th Cir. 2001). The scant legislative history of that amendment, however, suggests that Congress assumed that even pre-1972 law required charges by aggrieved persons to be in writing under oath at some point. The 1972 amendment to Section 2000e-5(b) permitted charges also to be filed "on behalf of" aggrieved persons, and extended the verification requirement to all charges, including Commissioner's charges and the new "on-behalf-of" charges. See Section-by-Section Analysis of H.R. 1746, 118 Cong. Rec. 7166 (1972). The amended provision, however, did not require that verification occur within the charge-filing period.

The regulation reflects EEOC's long-standing understanding that, while Title VII does require that a charge be verified by the complainant before EEOC may take action against the respondent, it does not require that the charge be verified before the expiration of the statutory limitation period. Accordingly, under the regulation, a complainant's verification of the charge may relate back to a charge that was filed during the proper period. That regulation is reasonable and consistent with the purposes of both the verification requirement and the statute of limitations. The verification requirement is intended to prevent harassment of employers with frivolous charges by impressing on complainants the gravity of filing a charge of discrimination and the obligation to tell the truth in doing so. See *Blue Bell Boots* v. *EEOC*, 418 F.2d 355,

357 (6th Cir. 1969); see also *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 76 n.32 (1984) (the "function of an oath is to impress upon its taker an awareness of his duty to tell the truth"). That purpose is satisfied as long as the charge is sworn to or affirmed before the employer must cooperate in the investigation. Under EEOC practice, the complainant must submit a verified charge before EEOC will require a response from the employer, and that procedure was followed in this case. See C.A. App. 52.[8]

On the other hand, "[t]he limitations periods [of Title VII], while guaranteeing the protection of the civil rights laws to those who promptly assert their rights, also protect employers from the burden of defending claims arising from employment decisions that are long past." *Delaware State Coll.* v. *Ricks*, 449 U.S. 250, 256-257 (1980); see also *Crown, Cork & Seal Co.* v. *Parker*, 462 U.S. 345, 352 (1983). A complainant who, in compliance with an EEOC regulation, submits within the applicable time period a detailed letter to EEOC that explains the factual basis for his claim of discrimination and identifies the alleged responsible parties cannot be said to have slept on his rights. The short deadlines imposed by Title VII also ensure that, even when the charge is formally verified and EEOC's contacts with the employer are initiated after the limitation period has expired, there is little danger that employers will find themselves obligated to defend against decisions

[8] EEOC's regulation is also consistent with the statute's requirement that a formal charge be filed with the Commission. The purpose of such a charge is to inform the Commission that the respondent may have violated Title VII. See *Shell Oil*, 466 U.S. at 68. That purpose is fulfilled if the charge is "sufficiently precise to identify the parties, and to describe generally the action or practices complained of," as required by 29 C.F.R. 1601.12(b).

that are "long past." As this case demonstrates, when a complainant submits a written but unverified charge of discrimination to the Commission, EEOC contacts the complainant to obtain further information about the charge in a personal interview and may eventually prepare a charge form for the complainant to sign and verify. See C.A. App. 51, 88. EEOC's practice is to warn complainants that, unless they follow up on the initial unverified letter charging discrimination by scheduling an interview within 30 days, EEOC will assume the complainant did not intend to file a charge and will not proceed further. *Id.* at 88. Combined with Title VII's short limitation periods, that practice minimizes the risk that an employer will be surprised with a charge of discrimination years after the alleged unlawful employment practice.[9]

The EEOC regulation is also consistent with this Court's decisions recognizing that Title VII complaints are usually filed with the Commission by laypersons without the assistance of trained lawyers, and so the statute's charge-filing requirements should not be construed in a highly technical manner that would impede discrimination charges from being filed by complainants and investigated by the Commission. See *Commercial Office Prods.*, 486 U.S. at 123-124; *Zipes* v. *Trans World Airlines, Inc.* 455 U.S. 385, 397-398 (1982); *Mohasco Corp.* v. *Silver*, 447 U.S. 807, 816 n.19 (1980); *Love* v. *Pullman Co.*, 404 U.S. 522, 527 (1972); see also *Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750, 761 (1979) (Age Discrimination in Employment Act of 1967). Those observations are particularly appropriate with regard

[9] In this case, for example, EEOC notified respondent of petitioner's charge of discrimination on April 21, 1998, well within a year of the alleged violation of Title VII. See C.A. App. 52.

to Title VII's requirement that a charge be verified, a requirement of which the vast majority of complainants would likely be unaware before contacting the Commission.

3. The decision of the court of appeals also warrants review because the circuits have reached conflicting views about the validity of the EEOC regulation at issue here. The Eighth Circuit, like the Fourth, has concluded that a charge must be verified as well as filed within the limitation period and has therefore invalidated the EEOC regulation.[10] The other courts of appeals that have considered the matter have held, consistent with EEOC's regulation, that verification may occur outside the charge-filing period and may relate back to a timely-filed but unverified charge.[11]

That conflict in the circuits is particularly deserving of this Court's review, even beyond the traditional considerations governing certiorari (see Sup. Ct. R. 10(a)), because several EEOC district offices serve individuals in more than one of the circuits, including circuits with conflicting rulings on the EEOC regulation at issue

[10] See *Shempert* v. *Harwick Chem. Corp.*, 151 F.3d 793, 796-797 (8th Cir. 1998), cert. denied, 525 U.S. 1139 (1999); *Schlueter* v. *Anheuser-Busch, Inc.*, 132 F.3d 455, 458 (8th Cir. 1998).

[11] See *Philbin* v. *General Elec. Capital Auto Lease, Inc.*, 929 F.2d 321, 323-324 (7th Cir. 1991); *Peterson* v. *City of Wichita*, 888 F.2d 1307, 1309 (10th Cir. 1989), cert. denied, 495 U.S. 932 (1990); *Casavantes* v. *California State Univ.*, 732 F.2d 1441, 1443 (9th Cir. 1984); *Blue Bell Boots*, 418 F.2d at 357 (Sixth Circuit); *Weeks* v. *Southern Bell Tel. & Tel. Co.*, 408 F.2d 228, 230-231 (5th Cir. 1969); see also *EEOC* v. *Sears, Roebuck & Co.*, 650 F.2d 14, 18-19 (2d Cir. 1981) (upholding validity of Commissioner's charge verified by Commissioner after term had expired).

here.[12] EEOC offices processing charges from States within the Fourth and Eighth Circuits must now attempt to ensure that charging parties in those States verify their charges within the charge-filing period, despite EEOC's contrary regulation and field guidance, and despite the fact that charging parties from other States who file charges in the same district offices are entitled to the benefit of EEOC's relation-back regulation. Nor is the uncertainty limited to the enforcement of Title VII itself. Because the Americans with Disabilities Act of 1990 (ADA) incorporates by reference Title VII's procedural provisions (see 42 U.S.C. 12117), the uncertainty carries over to charges of discrimination under the ADA filed with EEOC. This Court's resolution of the conflict is needed to ensure uniform treatment of charges of discrimination that are filed with EEOC during the statutory limitation period but are not verified until after that period has expired.

4. Respondent does not dispute that there is a conflict in the circuits on the validity of the EEOC regulation. Respondent argues rather that this case does not present an appropriate occasion for this Court to consider that issue because, it maintains, petitioner's

[12] EEOC's Milwaukee District Office encompasses parts of the Seventh and Eighth Circuits; the Denver Office includes parts of the Eighth and Tenth Circuits; the St. Louis Office covers parts of the Eighth, Seventh, and Tenth Circuits; and the Memphis District Office spans parts of the Sixth and Eighth Circuits. Those offices serve areas in circuits with directly conflicting decisions. In addition, other EEOC offices serve areas within one circuit that has invalidated the regulation and one or more circuits that have not ruled on the matter but where the regulation is still in force. The Philadelphia District Office covers parts of the Third and Fourth Circuits, and the Baltimore District Office covers a part of the Fourth Circuit and the D.C. Circuit.

initial November 14, 1997, letter was not intended to be a charge of discrimination and was not treated by EEOC as a charge. See Br. in Opp. 4-9; but see C.A. App. 80-81, 90-91 (declarations submitted to district court by EEOC employees to the effect that they treated petitioner's initial letter as a charge). Respondent points out (Br. in Opp. 4-5) that both the district court and Judge Luttig would have resolved this case on that narrower ground without reaching the validity of the regulation.

Nonetheless, the panel majority addressed the validity of the EEOC relation-back regulation, invalidated that regulation, and resolved the case on that basis, and not on the alternate ground suggested by Judge Luttig. The panel's holding that the EEOC regulation is invalid, and that under no circumstances may the verification of a charge of discrimination relate back to the initial timely filing of an unverified charge, is binding precedent in the Fourth Circuit. The Commission is obligated to follow that precedent in cases arising from that circuit, even though (as noted above, see p. 19 and note 12, *supra*) the Commission's offices in Baltimore and Philadelphia cover both the Fourth Circuit and another circuit where its relation-back regulation is still applicable. Should this Court reverse the court of appeals' decision and hold that that regulation is valid, respondent will be able to present on remand its alternate argument that the regulation was not satisfied in this case because petitioner's November 14, 1997, letter was not a charge of discrimination.

CONCLUSION

The petition for a writ of certiorari should be granted as to the first question presented.

Respectfully submitted.

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